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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,231	07/15/2003	Christopher W. Smith	00-20b	1205

30699 7590 04/29/2005

DAYCO PRODUCTS, LLC
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EXAMINER

RAYFORD, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/621,231

Applicant(s)

SMITH ET AL.

Examiner

Sandra M. Nolan-Rayford

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Pursuant to entry of the amendment in the 03 March 2005 response ("the last response"), claims 1-11 and 13-18 are pending. Claims 12 and 19-34 were cancelled.

Rejection Withdrawn

2. The rejection of claim 12 as unpatentable over Kertesz (DE 4405409C1) in view of Sadler (GB 2258767A) and Shida (US 4,481,262), as set out in section 9 of the 09 December 2004 office action ("the last office action"), is cancelled in view of the claim amendments in the last response.

Rejection Maintained

3. The 35 USC 103 rejection of claims 1-11 and 13-18 as unpatentable over Kertesz with Sadler and Shida, discussed above, is maintained for reasons of record.

Comment re: Amendment to Claim 1

4. Applicants did not present a marked-up copy of amended claim 1 in the last response.

Response to Arguments

5. Applicant's arguments filed in the last response have been fully considered but they are not persuasive.

On page 5 of the response, applicants summarize the 35 USC 103 rejection of claims 1-18.

The examiner does not take issue with the statements made on page 5.

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On page 6, applicants argue that the outer layer in Kertesz's hose contains a polyolefin or a polyamide and that applicants' outer layer does not include a polyamide.

However, applicants are arguing an unclaimed limitation. See MPEP 2145(VI).

Applicants do not exclude polyamides from the outer layers of their tubes.

Recitations of "comprising" (claim 1, line 2) and "constructed of" (claim 1, line 9) are not tantamount to the use of "consisting of" in either passage in claim 1, so that the resins recited in claim 1 need not be the only polymers in the tube's inner/outer layers.

On page 6, in the penultimate paragraph, applicants argue that they specifically preclude the use of polyamides in their outer layer.

However, the claims are not so limited. See MPEP 2145(VI).

Final Rejection

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.


S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

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